

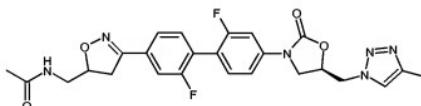
Remarks/Arguments:

Claims 1, 5-9, 11-13, 15, and 18-23 are pending in the instant application.

Rejections under 35 U.S.C. §103(a)

The Examiner rejects claims 1, 5-9, 11-13, 18, and 20-23 under 35 U.S.C. §103(a) as allegedly being obvious over Gravestock et al., WO 03/022824 (hereinafter, "the '824 Publication").

The Examiner further states that Gravestock et al. teach specific compounds of Example 16



of page 67 of the specification, which allegedly read on the instant claims 1, 7-9, 11, 13, 18, and 20-23.¹

Applicants respectfully traverse this rejection and contend that the '824 Publication does not qualify as prior art under 35 U.S.C. §103(a). In the previous office action, the Examiner alleged that the pending claims were anticipated by the '824 Publication under 35 U.S.C. §102(e). As applicants pointed out in their previous response, however, the '824 Publication does not anticipate the instant claims because it does not teach each and every element of the claims. The Examiner has accordingly withdrawn the rejection under 35 U.S.C. §102(e), for which applicants thank the Examiner.

The Examiner now uses this same reference as the basis of a rejection under 35 U.S.C. §103(a). However, as the Examiner is aware, under 35 U.S.C. §103(c), the subject matter of the '824 Publication may not be used as the basis of a 35 U.S.C. §103(a) rejection, because the subject matter of the '824 Publication and the claimed invention were, at the time the invention of the instant application was made, both subject to an obligation of assignment to AstraZeneca AB. Applicants respectfully request that this ground of rejection be reconsidered and withdrawn.

¹ It is respectfully noted that the structure to which the Examiner refers to as Example 16 of the '824 Publication is actually that of Example 15. However, Applicants' position is not affected by this.

Application No. 10/536,729
Amendment Dated January 23, 2007
Reply to Office Action of October 23, 2006

Obviousness-Type Double Patenting

The Examiner states that his provisional double patenting rejection of claims 1, 7-9, 11-12, and 18 over claims 1-10 of copending U.S. Application No. 10/636,686 is maintained.

Applicants respectfully note that no allowable claims have been identified in the instant application. Accordingly, Applicants submit that the rejection is premature and reserve the right to respond should the rejection be maintained once allowable claims have been identified.

Applicants believe the application is now in condition for allowance, which action is respectfully requested.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 100859-1P US.

Respectfully submitted,
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